SERVICES 2000:

Canadian Services Industries and the GATS 2000 Negotiation

THE CANADIAN CONSTRUCTION INDUSTRY

A Consultation Paper
in preparation for World Trade Organization (WTO)
General Agreement on Trade in Services (GATS) Negotiations

Canada

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EXECUTIVE SUMMARY

Canada will soon be involved in comprehensive multilateral negotiations regarding trade in services. This discussion paper attempts to increase industry awareness of the main issues, challenges, and most importantly, opportunities that are relevant to the construction services industry. It also seeks to gather input regarding the kind of approach Canada should take and the types of goals the construction services industry would like to see achieved during these service negotiations. Comments provided in response to this document will help the government establish its negotiating objectives.

International trade in services is regulated by the General Agreement on Trade in Services (GATS). This Agreement was negotiated during the Uruguay round of multilateral trade negotiations and covers all service sectors and all forms of trade in services. While the GATS is a government-to-government agreement, it is of direct relevance to firms because it lays down the framework of international rules within which firms operate around the globe.

Within the global economy, the significance of trade in services in hard to ignore. International trade in services currently amounts to well over one trillion US dollars, a significant portion of the trade in goods and services. The service industries also account for a significant portion of growth in global trade and in new job creation. In light of this increasing tradeability of services and the growing importance of service sectors to the economy, it is important to establish rules and continue liberalizing trade in services.

The global construction sector itself is a core economic activity for many countries and the global construction industry generates revenues in excess of $4.4 trillion US. While Canada's presence in the global construction market is relatively small, the sheer size of the market, combined with Canada's expertise, set the stage for tremendous opportunities for growth. This increased interest and presence in the global market are not restricted to large Canadian firms; indeed, small and medium-sized companies with highly specialized expertise are also in a particularly advantageous position. It is with this in mind that Canada intends to set its negotiating agenda with respect to construction services.

Through this discussion paper, we are attempting to identify the barriers that the Canadian construction sector faces when trying to export their services. Barriers may consist of: 1) technical requirements; 2) building permits; 3) other regulations; 4) nationality and residency requirements; 5) restrictions on the mobility of highly skilled workers; 6) obligations to hire and train local staff; 7) restrictions on the establishment and operation of a foreign firm, etc. Through the GATS and other multilateral trade negotiations, Canada hopes to secure better access to foreign service markets, improved government procurement disciplines, and higher levels of liberalization in the service sectors.

The construction industry's input and participation are essential and will help further determine Canada's negotiation agenda. A clear understanding of the barriers that have limited the exportation of Canadian construction services will facilitate the establishment of appropriate negotiating objectives. Ensuring continued growth and opportunities for Canadian industry will be fundamental to the negotiations.

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I. INTRODUCTION

One of the key accomplishments of the last round of multilateral trade negotiations was the negotiation of the General Agreement on Trade in Services (GATS). This negotiation resulted in improved rules for governing international trade in services. While much was accomplished during this first round of negotiations on trade in services, there remains room for improvement, for expanding coverage of commitments, and for eliminating trade restrictions. A new round of negotiations, scheduled to begin no later than January 2000, will seek to expand the existing commitments in trade in services.

Promoting trade liberalisation continues to be an objective of the Canadian government. Strengthening and expanding the GATS is key to capitalizing on trade opportunities, increasing exports from our service sectors, and creating jobs and growth for all Canadians. Increased access to international trade and investment opportunities for the service providers results not only in job creation in the service sectors but also creates opportunities for all businesses.

The GATS is not just a treaty that exists between governments; it is first and foremost an instrument for the benefit of business. Specifically, it increases opportunities for services companies wishing to export services or to invest and operate abroad. The Canadian government believes that further liberalization under GATS will benefit Canadian industry and individuals alike. Active involvement of the private sector is important to ensure successful negotiations. Business involvement ensures that trade policy corresponds to the real export and economic interests of the Canadian service industries.

"Active service industries involvement in the negotiations is crucial to target Canadian negotiating objectives towards the priorities of business"

Over the coming months, Canada will be consulting closely with service providers, provincial governments and other interested parties to define Canadian objectives for these negotiations. The messages heard during these consultations will form the core of the Canadian negotiation strategy as they will help to determine our negotiating position (what we want or need from other countries, what we are willing to concede in order to achieve our objectives and the industry's interests).

This document represents the first step in a consultation process aimed at determining the negotiating position of the Canadian *Construction and Related Engineering Services* sector. The definition for this sector is based on the *World Trade Organization's Services Sectoral Classification* used by the majority of Member countries (i.e., those countries who are signatories to the World Trade Organization and thus GATS). This industry includes several sub-sectors such as general construction

work for buildings; general construction work for civil engineering; installation and assembly work; building completion and finishing work; and another category encompassing, among other things, pre-erection work at construction sites. For a more detailed definition please refer to Annex A.

It is our hope that the following analysis will provide valuable information while soliciting the views of industry members. Within this document you will find:

- A brief review of the General Agreement on Trade in Services (GATS),
- An overview of the service industries within a global and domestic context,
- An analysis of the construction sector globally and in Canada,
- A discussion of the changing international and domestic regulatory and trade environments,
- An analysis of current GATS commitments,
- A brief examination of Canada's other international commitments; and
- Initial Canadian objectives for GATS 2000.

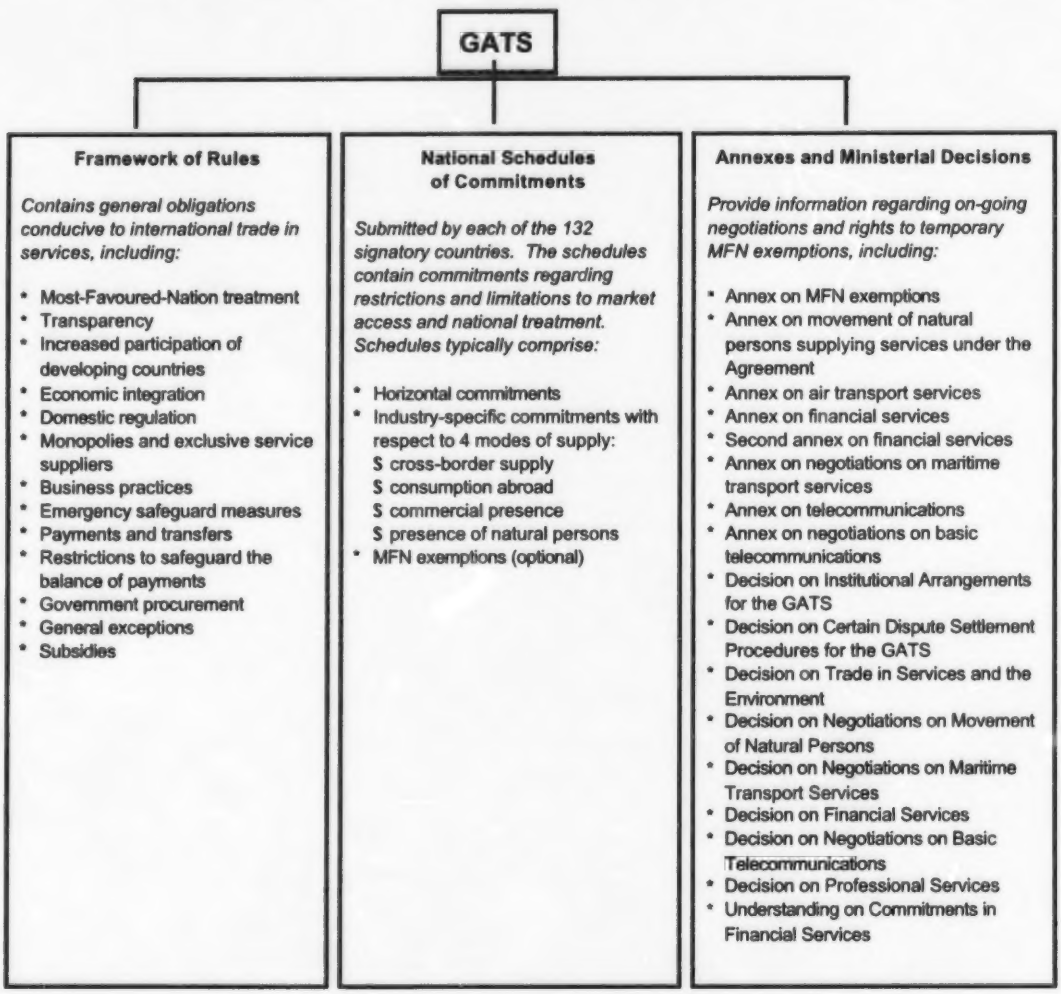
II. REVIEW OF THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

What is the GATS?

The General Agreement on Trade in Services (GATS), negotiated during the Uruguay round of multilateral negotiations, is a multilateral, comprehensive framework of rules governing trade in services. It applies to all service sectors and all forms of trade in services, including investment. It comprises three parts:

1) the general framework of rules and obligations;
2) individual schedules of commitments for each WTO Member, which specify, on a sector-by-sector basis, the conditions under which foreigners may supply services; and
3) annexes and ministerial declarations.

Figure 1: Components of the General Agreement on Trade in Services (GATS)


GATS
Framework of Rules
Contains general obligations conducive to international trade in services, including:
* Most-Favoured-Nation treatment
* Transparency
* Increased participation of developing countries
* Economic integration
* Domestic regulation
* Monopolies and exclusive service suppliers
* Business practices
* Emergency safeguard measures
* Payments and transfers
* Restrictions to safeguard the balance of payments
* Government procurement
* General exceptions
* Subsidies
National Schedules of Commitments
Submitted by each of the 132 signatory countries. The schedules contain commitments regarding restrictions and limitations to market access and national treatment. Schedules typically comprise:
* Horizontal commitments
* Industry-specific commitments with respect to 4 modes of supply:
$ cross-border supply
$ consumption abroad
$ commercial presence
$ presence of natural persons
* MFN exemptions (optional)
Annexes and Ministerial Decisions
Provide information regarding on-going negotiations and rights to temporary MFN exemptions, including:
* Annex on MFN exemptions
* Annex on movement of natural persons supplying services under the Agreement
* Annex on air transport services
* Annex on financial services
* Second annex on financial services
* Annex on negotiations on maritime transport services
* Annex on telecommunications
* Annex on negotiations on basic telecommunications
* Decision on Institutional Arrangements for the GATS
* Decision on Certain Dispute Settlement Procedures for the GATS
* Decision on Trade in Services and the Environment
* Decision on Negotiations on Movement of Natural Persons
* Decision on Negotiations on Maritime Transport Services
* Decision on Financial Services
* Decision on Negotiations on Basic Telecommunications
* Decision on Professional Services
* Understanding on Commitments in Financial Services

The multilateral trading system, under which the GATS was negotiated, has existed for fifty years. Among the outcomes of the latest round of negotiations was the establishment of the World Trade

Organisation (WTO). This organization is now responsible for overseeing the implementation of the various multilateral trade agreements and their dispute settlement mechanisms. The next round of GATS negotiations, GATS 2000, will take place under the auspices of the WTO.

While it is true that almost 50% of Canada's trade in services is made by the 100 largest companies in the service sectors, small and medium service firms are more likely to be engaged in exports than their goods producing counterparts.

While the GATS is a government-to-government agreement, it is of direct relevance to firms because it lays down the framework of international rules within which firms operate around the globe. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each member country, and a legal structure for ensuring that those obligations are observed. This allows companies to identify which markets are open to foreign service providers and to be sure that markets will remain open in the future. In the event of a disagreement, the Agreement contains a dispute settlement mechanism through which Member countries can attempt to obtain the treatment that they are entitled.

The Agreement establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country and a legal structure for ensuring that those obligations are observed

The GATS covers virtually every aspect of services trade including:

- the majority of services;
- almost all the major world markets;
- the different means by which a service can be supplied to a foreign market customer; and
- the establishment of commercial operations in foreign markets.

The GATS should be one of the key reference texts used by corporate planners seeking to exploit foreign opportunities, especially outside North America. The next round of the GATS negotiations in 2000, should be a key focus for action by business.

To whom does GATS apply?

All members of the WTO must abide by the GATS. With 133 Members, the GATS covers more than 90% global trade in services. Most of the other major economies have applied to join the GATS, including Russia, Ukraine, China, Taiwan, Vietnam, and Saudi Arabia. Once these countries are admitted,

virtually 100% of trade in services will be taking place between countries who have agreed to abide by the GATS rules.

What are the important obligations of the GATS?

The most important obligations of the GATS include the following:

Most-Favoured-Nation (MFN) Treatment. A WTO Member cannot discriminate among foreign service providers by offering more favourable treatment to service providers of any one country. Members are permitted to maintain existing measures which contravene the MFN obligation, but any exceptions must be clearly stated in a Member's MFN exemption list.

National Treatment. In the services sectors listed in a Member's schedule of commitments, a Member cannot take measures to discriminate between domestic and foreign service providers, i.e., foreign companies must be treated as favourably as domestic providers. Any measures which violate the national treatment obligation must be clearly inscribed in a Member's schedule of commitments.

Market Access. In the sectors listed in a Member's schedule of commitments, a Member cannot take measures which are defined in the GATS as restricting market access. Examples of measures which would restrict market access include: quotas, economic needs tests, requirements for certain types of legal entities, and maximum foreign shareholding limits. Any measures which violate the market access obligation must be clearly inscribed in a Member's schedule of commitments.

Domestic Regulation. Members' regulations must be administered in a reasonable, objective and impartial manner. Qualifications and licensing requirements and technical standards must be based on objective and transparent criteria, and not more burdensome than necessary to ensure the quality of the service.

Transparency. Each member shall make public all measures which pertain to the GATS agreement. The WTO must be notified of any relevant changes to government policies, regulations or administrative guidelines which significantly affect trade in services covered by the specific commitments under this Agreement. As well, Members must establish enquiry points and respond promptly to requests for information on their regulatory regimes.

In the event that a member fails to carry out its obligations or specific commitments under the GATS, other members have recourse to the WTO's Dispute Settlement Mechanism.

How does the GATS relate to the day-to-day business of supplying a service?

The GATS covers all the major ways in which service suppliers serve their clients - the so-called modes of supply. This means that countries have to say whether or not they allow:

- foreign companies to deal with clients in their market from across the border (i.e., electronically);
- their citizens to travel abroad to the supplier in order to consume a service;
- foreign service suppliers to establish companies in their market; or
- suppliers to enter the country in person to do business.

As a result, companies know where they stand in foreign markets and in their dealings with foreign clients. If companies encounter barriers related to these modes of supply, they can verify whether the GATS member concerned has made legal commitments in this area and ask for the assistance of their government in resolving the issue. Members have recourse to a dispute settlement process in case another Member breaks its obligations.

The Bottom Line

The GATS is a broad and comprehensive agreement which gives both guidance and enforceable guarantees to service suppliers who are seeking to supply services to foreign clients. Whatever the service sector, whatever the means of supplying the service and whatever the target markets within the WTO Member countries, the provisions of the GATS provide guidance. When in doubt about their rights in a foreign market, or when seeking to clarify the opportunities open to them, GATS should be a first point of reference for all service suppliers.

The GATS is primarily helpful to service exporters, but it also benefits other Canadians. As a result of facilitating increased trade and competition in services, business and consumer users of services have access to a broader spectrum of service suppliers and more competitive prices. All citizens stand to benefit from the new job opportunities and growth which can result from increased trade in services.

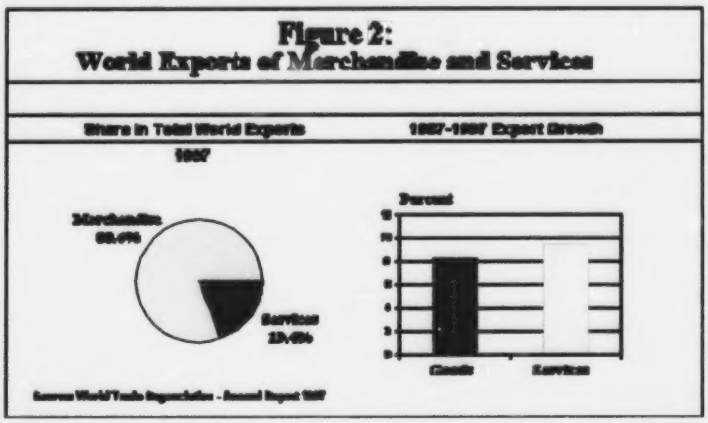
As the Canadian government conducts its pre-negotiation consultations, now is the time for industry and other interested parties to identify the foreign trade restrictions they would like see alleviated. Armed with this information, the government will strive to achieve an agreement that reflects the interests of Canadian industry and public.

III. THE IMPORTANCE OF TRADE IN SERVICES

The International Story

Within the global economy, the significance of trade in services is hard to ignore. In 1997, world trade in commercial services, measured on a balance-of-payments basis, accounted for approximately one-fifth of global exports of goods and services, a total of US$6.8 trillion. Consequently, trades in commercial services is currently valued at more that US$ 1.2 trillion worldwide.

Figure 2:
World Exports of Merchandise and Services



However, commercial potential extends significantly beyond simple cross-border flows of services. It is estimated that trade in services through commercial presence could be at least as large as cross-border trade - that means that the balance of payments figures may only account for half the actual trade in services.* Several groups argue that services account for approximately 60% of the world's economic output, or more than US$14 trillion in economic activity which could be within the reach of international competition.

* **Cross-border trade in services** - where trade takes place from the territory of one member into that of another. Only the service itself crosses the border, without the movement of persons, e.g., Engineering plans sent by wire or satellite.
Commercial presence - any type of business or professional establishment, including branches and representative Offices, e.g., direct investment in the cost country. This data is currently unavailable.

Canada's Position

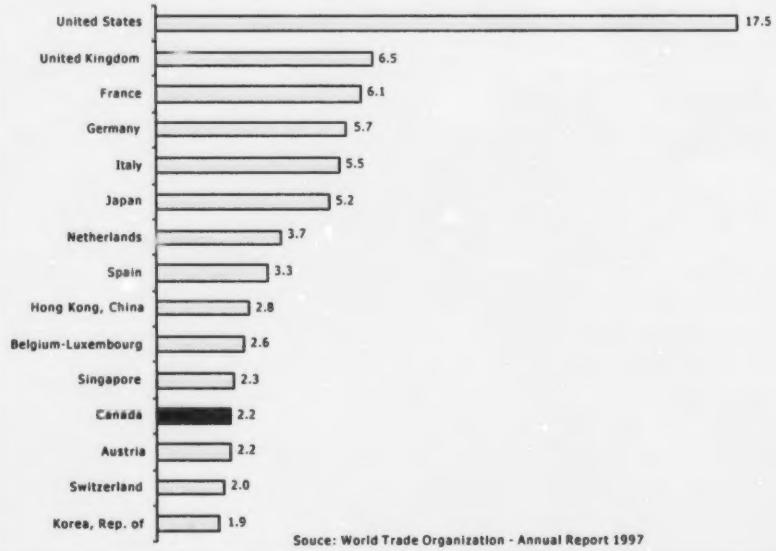
The services industries already play an important role in the Canadian economy and the service industries are growing faster than other components of Canadian Gross Domestic Product (GDP).

Currently, these domestic industries account for two thirds of GDP, almost three-quarters of employment, and nearly 90% of new job creation in Canada.

In 1997, the service industries generated 12.1% of total exports; these exports accounted for 4.8% of Canada's GDP. At the same time, service imports represented 5.8% of Canada's GDP. Between 1987 and 1997, service exports grew on average by 9.1% a year, with commercial service exports growing at the more rapid pace of 11.2% per year. In addition, Canada's trade deficit in services fell from a peak of $13.4 billion in 1993 to $8.8 billion in 1997. As a result, Canada ranked 12th in the world for its exports of services in 1997 - representing 2.2% of the world's total services exports.

Figure 3: World Ranking

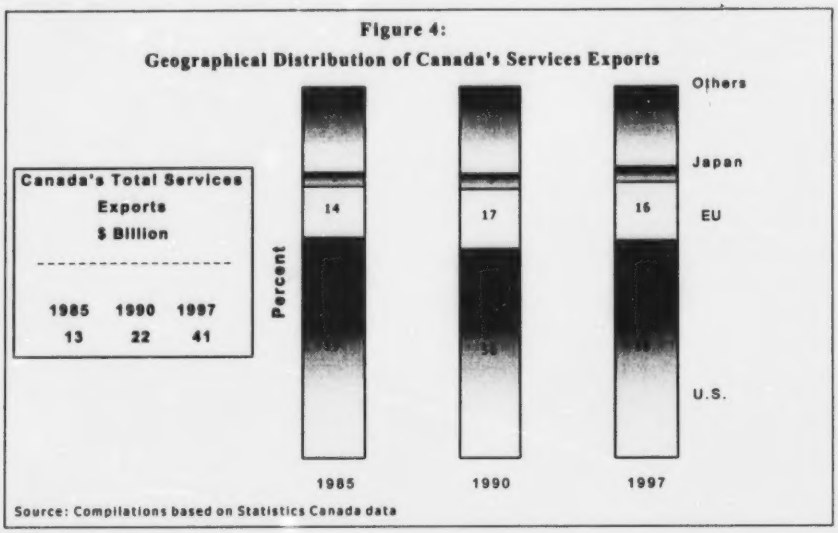
Percent Share of Services Exports 1997



Souce: World Trade Organization - Annual Report 1997

As with merchandise trade, the U.S. continues to be the main destination of Canada's services exports. However, the exports of services are more internationally diversified and the U.S. accounts for

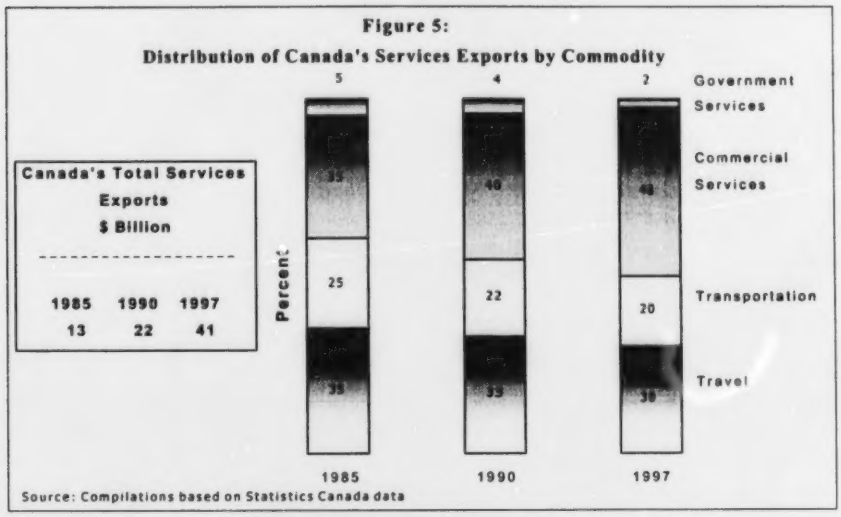
Figure 4:
Geographical Distribution of Canada's Services Exports



Source: Compilations based on Statistics Canada data

only 60% of total exports. One-fifth of Canada's services exports are bound for the European Union and Japan. The rest of services exports go mostly to other Asia Pacific and Latin America countries.

Between 1985 and 1997, the share of commercial services exports in total services exports rose by 13 percentage points to 48 percent. Commercial services include telecommunications; computer and information services; insurance and financial services; management consultant services; R&D services; and intellectual property services and royalties. During the same period, transportation and travel services grew at a slightly lower rate and now represent a smaller part of Canada's service exports.



While it is true that almost 50% of Canada's trade in services is made by the 100 largest companies in the service sectors, small and medium service firms are more likely to be engaged in exports than their goods producing counterparts.

...and this means?

In light of the increasing tradeability of services and the growing importance of the service sectors to the economy, the prospects for more rapid growth in services trade are excellent. Canada clearly has the expertise and capabilities necessary to succeed in selling its services into rapidly growing international markets. In particular, Canadian construction companies should be able to capitalize on this growing trend of trade in services. The opportunities of the international market need to be explored.

IV. THE CONSTRUCTION INDUSTRY

The Construction Industry Size

Globally, the construction industry is one of the largest sectors. Total world activity in 1992 was estimated at $4,433 billion, with the majority of the activity located in North America, Europe and Asia.

Table 1:
WORLD CONSTRUCTION ACTIVITY, 1992*

Region	Value	Share of World Market
	($ billion)	(%)
North America	860	19.4
European Union	1 355	30.5
Eastern Europe	48	1.1
Former USSR	261	5.9
Asia (except Japan)	559	12.6
Japan	993	22.4
South and Central America	213	4.8
Africa	70	1.6
Oceania	74	1.7
Total	4 433	100.0

* Latest year available.
Source: Industry Canada estimates based on United Nations Data

In most industrialized economies, the share of construction in total GDP is between about 5 and 7 per cent. In Canada, the construction industry is the single largest industry accounting for approximately 15% of GDP. In 1997 total construction expenditures in Canada was approximately $96 billion (including residential and non-residential construction). Of this amount, $38 billion was "value-added" construction or construction gross domestic product (GDP).

The Structure of this Global Sector

The construction sector represents, for many countries, a core economic activity. It not only provides the infrastructure for all other industries, but also constitutes one of the largest single sectors in the economy on its own. Closely linked with public works, governments have relied on the construction sector as a strategically important industry for creating employment and sustaining growth. For the developing economies, the construction sector carries particular importance because of its link to the development of basic infrastructure, training of local personnel, transfer of technologies, and improved access to information channels.

Construction services, in a large number of countries, are primarily supplied through the establishment of service suppliers at or near the site for the work by local or regional operators. On-site establishment is normally confined to the duration of the particular project, while regional or local presence may be ensured on a permanent basis to service or promote several projects. Joint ventures between foreign and domestic firms are quite common - often out of necessity for financing of projects; transfers of technology and know-how; and assistance in meeting local laws, regulations, and practices.

In many countries, construction services may be carried out by general contractors who complete all the work for the proprietor of the project, or by specialized sub-contractors who undertake parts of the work. Analysis by the WTO Secretariat indicates that most countries have a small number of large firms, a moderate number of medium-sized firms, and a large number of small firms who specialize in certain fields or who operate in small geographical areas.

The International Supply of Construction Services

Construction services supplied internationally typically relate to large-scale projects such as airports, harbours and petrochemical plants, and are often undertaken by specialized contractors with the assistance of local sub-contractors. Internationally active companies constitute a handful of all construction firms but recently, particularly in Europe, international activity in the construction industry has risen. The Japanese are also apparently increasing their foreign activities.

According to the WTO Secretariat, the international supply of construction services involves large movements of workers at all levels of skill. Although statistics regarding the movement of workers related to the industry are not readily available, analysts believe that large portion of the movement of workers into the industrialized countries and the Middle East from Asia, Latin America and other developing regions are construction-related.

Because of the type of work involved, the majority of construction services are either supplied by the commercial presence of a foreign company or through the presence of natural persons. The cross-border supply of construction services is assumed to be practically non-existent as a result of technical infeasibility (i.e., construction services cannot be supplied without the movement of service providers). However, some services (such as land surveying and blue-print designing) may become increasingly traded over telecommunications infrastructures. As electronic commerce develops there may be some changes in the way that construction services are supplied.

A Canadian Industry Snapshot

As with many other countries, the Canadian construction industry is composed primarily of a large number of small and highly specialized companies. In 1995 the industry comprised 20,000 general contractors and 107,500 trade contractors. In that year, the total Canadian construction market stood at approximately $100 billion. Roughly two-thirds ($66 billion) of this activity was carried out by the contracting industry. The balance was undertaken by the in-house resources of establishments not primarily engaged in construction (e.g., utilities, governments, private companies). All together, the industry employed 724,000 workers in 1995 (5.4% of total Canadian employment).

The market for construction is characterized by three key factors that have had a profound impact on the industry's structure and performance:

- *High cyclicality*: Construction is one of Canada's most cyclical industries, subject to large and unpredictable swings in demand. The construction sector is three times as volatile as the service sector in general and nearly 50% more volatile than the manufacturing sector.

- *Geographic diversity*: Construction projects are spread evenly across the country in direct proportion to demographic and economic factors.

- *Strong local presence*: Construction is a site-specific activity, requiring hands-on management and knowledge of local labour conditions and regulations. Non-tariff barriers have reinforced this need to be located in the same region.

The market for construction is characterized by:

high cyclicality, geographic diversity and strong local presence.

The cyclical nature of the construction market has had an immense impact on the industry's structure. The result is an industry that is highly fragmented, specialized and composed primarily of small companies. Over the years, the construction industry has adapted to operating successfully in a feast-or-famine market environment.

In order to limit their financial exposure to market downturns, firms in the industry operate with overheads that are very low relative to the size of the projects that they undertake. Financing and surety instruments have been developed to facilitate this. Contractors traditionally use bank and supplier credit to

finance their operations, and equipment is often leased or financed through a chattel mortgage. Performance bonds are available to limit the risk of engaging a contractor with a limited asset base.

Labour force and hiring practices in the construction industry are also geared to the boom-bust cycle. Most workers are hired on a project basis, often through union (and in some provinces non-union) hiring halls. Only a strategic nucleus of key employees is employed over the long term. As a consequence, firms are able to expand and contract their operations (and enter and exit the industry) in a relatively fluid manner in response to changing business conditions.

Companies have also tended to limit their overheads by being highly specialized and by operating within clearly defined areas of responsibility. They come together to construct a specific project and then go their separate ways. Very few Canadian firms provide the full range of services required to carry out the entire construction process (e.g., development, design, engineering, construction). Indeed, few construction contracting firms perform all of the contracting functions. Rather, the construction contracting sector consists, for the most part, of general contractors who undertake overall responsibility for the construction of a project and trade contractors who perform specialized services. Trade contractors normally operate as sub-contractors to general contractors on new construction, but will often contract directly with the owner on repair and renovation contracts.

Contracting firms also tend to specialize by confining their activities to a specific market area. The construction market comprises three major subsectors: residential construction; institutional, commercial and industrial construction; and engineering construction. Each accounts for approximately one-third of the total market. All three are quite distinct. They respond to different market forces, use different construction techniques and materials, and employ different labour forces.

Specialization, low overheads, the need to operate locally, and geographic dispersion have resulted in an industry that is composed primarily of a large number of very small firms. In 1995, only 1% of general contractors had revenues exceeding $20 million, while 80% had revenues less than $250,000. Trade contractors were, of course, much smaller; 80% had revenues under $250,000, while 4% had revenues over $1 million.

The need to have a strong local presence has also resulted in the industry being primarily Canadian owned and controlled. Only a handful of foreign-controlled contractors operate in Canada. They are, for the most part, subsidiaries of large international firms. These companies generally enter the Canadian market to construct a major project for which they possessed unique niche capabilities. Once the project is completed, they often maintain a Canadian presence, though they tend to operate at significantly reduced levels.

For the same reasons, Canadian-owned firms do not generally operate internationally, although there are a few notable exceptions to this rule. It is estimated that less than 1% of Canadian contractors' revenues come from international projects. However, given the size and maturity of the Canadian construction industry, Canada clearly possesses the expertise and capabilities to capitalize on freer international markets. With time companies will gain experience in the global market and increase their international activities.

It is estimated that less than 1% of Canadian contractors' revenues come from

V. THE CHANGING REGULATORY AND TRADE ENVIRONMENTS

A superior knowledge of local conditions (regulations, markets, labour force) generally gives local construction firms a distinct competitive advantage. Some of these local conditions represent non-tariff barriers which have historically played an important role inhibiting trade. This section explores these barriers from both a global and domestic perspective - including an analysis of the agreements established to alleviate some of the problems for Canadian construction firms.

Globally...

The construction sector is subject to many different types of domestic regulation. They include controls on land use; building regulations and technical requirements; building permits and inspection; registration of proprietors, contractors and professionals; regulation of fees and remunerations; environmental regulations; etc. Such measures are applied not only at the national level, but also very frequently at the sub-federal or local government level. Standards may be established by the governments, by standard-setting bodies, or private-sector associations.

Many of these measures are intended to ensure the safety of the objects constructed and the construction workers; to implement urban and land use planning; to protect the health and safety of workers and users; or for environmental protection purposes. These regulations and standards are generally established in the public interest. Even if the same measures are applied to all suppliers, domestic or foreign, foreign suppliers may find these measures more onerous because they are unfamiliar with local interests.

Even if the same measures are applied to all suppliers, domestic or foreign, they may be found to be more onerous to foreign

With its extensive use of skilled and unskilled labour, the construction sector is affected by limitations on the movement of people such as nationality and residency requirements. Measures which affect the mobility of the various skilled labourers affect suppliers, but restrictions on the movement of experts or specialists may have a particularly strong impact on foreign construction firms, as high-level skills are not easily replaceable. Stipulations to employ and train local staff can increase the burden on a foreign supplier.

Measures which affect the mobility of specialized equipment and those which affect the supply of related services, such as insurance and transportation, have an impact on the construction sector. Without the ability to make these transfers, the foreign suppliers cannot afford to operate. Capital and exchange controls also have a significant impact on the international construction market because they limit the movement of financial resources for construction projects.

Difficulties for foreign service suppliers may be created not only by the nature of the restriction but also by the fact that the required permits and licences are granted by a large number of national and local authorities or industry associations. They may not always welcome foreign competition in the markets or may not be sensitive to the trade effects of regulation. The lack of transparency concerning the rules that apply, as well as the informal nature of the business practices, could cause frustration for foreign service providers.

Restrictions on the establishment and operation of foreign firms, such as limitations on foreign investment (for example, only minority ownership allowed for foreigners) or on the types of legal entities allowed (such as a local incorporation requirement, or a prohibition on establishing branches) can constitute obstacles to market access. As mentioned above, the formation of a joint operation or a joint venture company with local suppliers or sub-contractors is often an economic necessity, but requirements to do so could create a burden on the foreign suppliers' ability to make its own decisions based on business conditions. Other limitations would include economic needs tests which allow foreign suppliers access to contracts only when resources and materials are not available locally.

Subsidies and tax incentives are provided in many countries to promote construction work or to encourage growth of the construction sector. If they are granted only to local suppliers, they may inhibit competition from foreign firms. There can also be preference provided to local contractors in bidding. Foreign companies may also be required to transfer technology. Restrictions on the ownership of land by foreigners are normally applied to all sectors, but may have a strong effect on the construction industry, since property developers would not be able to own apartments and housed under construction until completion.

...and in Canada...

For both Canadian and foreign construction firms, government plays a unique role in the construction process as both a regulator and a property owner.

As a regulator, the government plays a key role in establishing the overall business environment for construction. The federal government develops model national construction codes and establishes the parameters for federal environmental assessments. Provincial governments are responsible for provincial construction codes (based on the national model codes), labour standards, and environmental regulations. Finally, municipalities set zoning requirements and are responsible for approving building applications, issuing building permits, and conducting building inspections. While these federal, provincial and municipal regulations and codes do not fall under the aegis of the GATS, it is possible that these issues might represent barriers to trade if foreign countries are not privy to the same information as domestic companies.

As a property owner, Canadian governments and government-funded institutions account for approximately one-third of non-residential construction activity. While the GATS currently imposes only minimal disciplines on government procurement of services, a working group is exploring the possibility of developing new disciplines in this area. Since Canada is already committed to the plurilateral Agreement on Government Procurement (AGP), certain obligations already exist to provide equal access to international companies.

Canada's construction service industry is relatively open. According to the construction section of Canada's GATS schedule, the only limitations on the provision of construction services via cross-border trade relate to certain types of construction undertaken from barges, which are protected by cabotage restrictions. The only identified restrictions on commercial presence were in Ontario and Labrador, where non-resident construction contractors are required to submit a deposit or post a bond. Other limitations on access to the Canadian construction sector relate to horizontal market issues.

A number of general marketplace framework laws exist which, depending on circumstances, may have a bearing on firms in the construction sector. Requirements for review of large scale acquisitions of Canadian firms, the possibility of limitations on foreign participation in newly privatized entities, nationality requirements for senior management and boards of directors and some limitations on acquisition of land are examples of these. For example, Canada's horizontal schedule in the GATS identifies several provinces which have residency requirements and restriction on land purchases.

...the regulatory and trade environment is changing.

International agreements have sought to alleviate some of the barriers faced by Canadian firms abroad. The NAFTA's investment, temporary entry, rules-of-origin and procurement provisions give signatory countries the right to establish themselves in any jurisdiction, to have their executives, managers, architects, engineers and employees with highly specialized skills work temporarily at any job site, to bring to the job site any equipment that is manufactured in North America and to bid on any government construction contract valued at more than $6.5 million or any government-owned corporation contract over $8 million.

Under the GATS, most developed countries and many developing countries have made specific commitments permitting the foreign supply of construction services. In some cases, these commitments are qualified by restrictions limiting market access or national treatment particularly in the area of government procurement. However, work is underway to develop new disciplines to ensure better access to government procurement projects. Moreover, it is worthwhile to note that several developed countries have obligations in this respect under the WTO's General Agreement on Government Procurement (AGP).

Due to the trade liberalizing effects of these agreements, Canadian construction firms, particularly those whose local markets are depressed, are beginning to become more interested in exporting their services. In the past, very few companies have ventured into foreign markets, however, a limited number of firms have been active in the U.S. market. These have generally been larger companies that have for the most part operated through subsidiaries. Some companies have also undertaken work in developing countries, but this has usually been limited to cases where financing was made available through the Export Development Corporation (EDC), the Canadian International Development Agency (CIDA) or the multilateral development banks. Overall, it is estimated that less than 1% of the revenues of construction firms have been obtained through exports.

This is now beginning to change. Companies are beginning to do more work in neighbouring provinces and in adjacent parts of the United States. This activity is not confined to the larger firms. Indeed, many of the more successful exporters are small and medium-sized companies with highly specialized expertise (e.g., trenchless excavation, slip-form construction, concrete restoration). Because of the importance of having a strong local presence, many Canadian firms are choosing to form alliances with local companies rather than establishing their own operation and are exporting their project management skills.

Companies are also beginning to explore opportunities outside of North America. Many developing nations, particularly those in Asia and South America, are turning to public-private partnerships

as a means of satisfying the infrastructure demands created by their rapid urban and economic growth. International financial institutions such as the World Bank and the Asian Development Bank are also increasingly seeking private sponsorship and risk-sharing in the infrastructure projects that they support. The fall of the Iron Curtain has opened up the market in eastern Europe, and some Canadian firms, particularly those whose owners have cultural and family links, are beginning to do work there.

But What Remains to Be Done?...

The Canadian construction industry continues to face a number of problems that limit its ability to take full advantage of the opportunities presented in the international marketplace. Some of these problems arise from aspects of the domestic situation within Canada but barriers abroad also play a significant role.

...Domestically...

Firms are inhibited by the substantial up-front costs involved in bidding on international projects and in establishing a presence in foreign markets. Companies pursuing international projects often find it difficult to access financing and investment capital and to assemble the necessary financial packages. Financing, bonding, performance guarantees, insurance and legal services for offshore projects are often unavailable in Canada and are often sourced abroad. Canadian industry has also indicated that competitors from other developed nations often have access to financial guarantees that are not available in Canada.

Despite the fact that they possess strong technical capabilities, Canadian firms have had little success in winning bids for infrastructure projects conceived as public-private partnerships. Although many nations have used public-private partnerships for some time to procure their infrastructure needs, Canadian governments are only now beginning to use this mechanism. As a result, few Canadian firms have the experience necessary to successfully compete in international markets for public-private partnerships.

Public-private partnerships require participants to take on significantly increased risks and to arrange for financing. Most Canadian firms lack the expertise necessary to assess the risks of international projects, are unused to forming the consortia necessary to develop a project, and have not developed strong links with potential sources of capital. Furthermore, the Canadian financial sector has equally little experience with public-private projects and often seems reluctant to offer the financing and cannot provide the financial advice needed.

As exports in construction services increase, the areas where new expertise are required become apparent. Over the past year, various initiatives have been launched to address the hurdles to exporting. It is expected that, as the domestic market for public-private partnerships increases and Canadian consortia develop the skills necessary to service this market, international work involving partnerships will increase noticeably.

...Internationally...

In many countries, the public sector plays an important role in the demand for construction services. While there is a global trend toward privatization, in some countries government procurement can still generate as much as half of the total demand for construction services. Consequently, domestic regulations and practices adopted with regard to public procurement can potentially represent significant barriers to foreign firms seeking to bid on publicly financed projects.

Despite progress in the NAFTA and GATS, market entry is still often impeded by local regulations, technical requirements, product standards and discriminatory approval processes.

While the GATS rules on Most-Favoured Nation treatment, market access, and national treatment currently do not apply to the government procurement of services, the development of new disciplines is being examined. Some developed country members are already signatories to AGP which is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

Finally, despite the progress of the NAFTA and the GATS, non-tariff barriers continue to be a problem. Market entry is still often impeded by local regulations, technical requirements, product standards, and discriminatory approval processes. While the next round of GATS negotiations does not represent a panacea for all of the challenges facing the construction industry, it does offer the potential to begin to address this set of issues.

The following section of this paper explores in more detail the current GATS commitments related to construction.

VI. ANALYSIS OF CURRENT GATS COMMITMENTS RELATED TO CONSTRUCTION

During the Uruguay Round of trade negotiations, a working group on construction and engineering services was created to discuss the applicability of the basic concepts developed for the services agreement to this sector. The group concluded that the construction sector in general did not require any sector-specific provisions or annotations for the basic issues of transparency, movement of personnel across borders, movement of equipment and material, movement of capital, transfers of technology to developing countries, and the importance of government procurement. Individual countries, however, do maintain restrictions in these areas in their country-specific schedules.

The following section analyses the commitments, related to the construction industry, made by WTO Members during the last round of negotiations. Annex B contains a summary of these commitments for Canada's key trading partners. For complete details about GATS commitments please contact us directly or visit our web site at http://services2000.ic.gc.ca .

Generally, the commitments embodied in the schedules submitted in this first round of services negotiations guarantee foreign service providers existing levels of access to local markets. These commitments on market access are of real value because they provide greater certainty and reduce the risk that new restrictions may adversely affect international business transactions.

The Horizontal Commitments to consider...

As mentioned earlier, all Members committed to the basic precepts of trade liberalization in services, including the Most-Favoured Nation (MFN) Treatment. In addition, several members also agreed to some basic horizontal issues and restrictions. These consist of broad measures affecting investment, real estate transactions, government subsidies or taxation, and the temporary movement of natural persons. To assess the full extent of trade liberalization, horizontal restrictions have to be examined in conjunction with sector-specific commitments.

...in light of the Sector-Specific Commitments

The remaining commitments are identified in the sector-specific schedules of each Member country. In the service sectors listed in their schedules, unless otherwise identified, Members agree to the basic obligations of the GATS: national treatment, market access, domestic regulation, and transparency.

As a result of the Uruguay Round and subsequent accessions, 69 WTO Members (out of 132) have made commitments in at least one of the sub-sectors under construction. In addition, China (who is not yet a member of the WTO), Aruba and the Netherlands Antilles (considered part of the Netherlands) submitted schedules. These countries represent most of the international market for construction services.

A table identifying the countries with commitments in the construction sub-sectors can be found at the end of Annex B. The countries that did not make commitments in the construction sector are not constrained by the GATS principles of national treatment, market access, domestic regulation, or transparency for this sector.

In total 58 schedules contained commitments under the construction sector. (The EU submitted a consolidated schedule for its 15 member states.) Twenty-three schedules, including Canada's, cover all five sub-sectors of the construction industry, nine cover only one sub-sector, and the average is between three and four. However, within the sub-sectors of the construction industry the coverage was sometimes very limited and the commitments also vary by mode of service delivery.

Analysis of the level of commitments can be done by categorizing the commitments as: full commitments (no limitation, implying total liberalization); partial commitments (those made with certain limitations); and no commitments (unbound). For all sub-sectors, excluding Other Construction Services, between 51 and 64% of all commitments made for *the supply of services through commercial presence* were strong commitments. These figures decline to between 29 and 36% when horizontal commitments are taken into account. In general, these figures compare favourably with other service sectors and seem to indicate that relatively liberal commitments were undertaken for this sector.

Table 2: Analysis of Commitments made by Members in Construction and Related Engineering by Sub-Sector

Market Access	Cross-Border Supply			Consumption Abroad			Commercial Presence			Presence of Natural Persons		
	full	partial	none	full	partial	none	full	partial	none	full	partial	none
General Construction Work for Buildings	29%	10%	60%	67%	21%	13%	60%	33%	6%	2%	96%	2%
	27%	*13%*	*60%*	*60%*	*27%*	*13%*	*31%*	*63%*	*6%*	*0%*	*98%*	*2%*
General Construction Work for Civil Engineering	27%	12%	61%	61%	20%	18%	51%	43%	6%	4%	94%	2%
	24%	*14%*	*61%*	*55%*	*27%*	*18%*	*29%*	*65%*	*6%*	*0%*	*98%*	*2%*
Installation and Assembly Work	32%	45	64%	66%	19%	15%	55%	36%	9%	2%	96%	2%
	30%	*6%*	*64%*	*60%*	*26%*	*15%*	*32%*	*60%*	*9%*	*0%*	*98%*	*2%*
Building Completion and Finishing Work	31%	5%	64%	72%	18%	10%	64%	28%	8%	3%	92%	5%
	28%	*8%*	*64%*	*62%*	*28%*	*10%*	*36%*	*56%*	*8%*	*3%*	*92%*	*5%*
Other Services	24%	18%	58%	27%	58%	15%	27%	64%	9%	0%	97%	3%
	21%	*21%*	*58%*	*21%*	*64%*	*15%*	*12%*	*79%*	*9%*	*0%*	*97%*	*3%*

Notes:

1. Full commitment is indicated by "none" in the market access column of the Schedule.
2. Partial commitment is when there are limitations inscribed in the market access column of the Schedule.
3. No commitment is indicated by "unbound" in the market access column of the Schedule.

All figures that are *red and in italics* indicate the percentage taking into account horizontal commitments applicable to all sectors.
Source: Architectural and Engineering Services - Background Note by the Secretariat, WTO Council on Trade in Services S/C/W/38.

Commitments also vary by country and region. Strong commitments have been provided by countries including the U.S. and Europe. Regions such as South America, the Middle East, and Africa are

still relatively restrictive since only a few countries submitted schedules and even those submitted are not very substantial. The level of commitments in the construction industry range from Norway, with no limitations except in the presence of natural persons (unbound except as identified in the horizontal section), to Cuba which remains unbound in all areas except market access for commercial presence.

At the norm, Member's schedules are unrestricted with respect to all modes of supply except the Presence of Natural Persons. The other common restriction is in the cross-border supply of construction services which is unbound for reasons of technical infeasibility (i.e. construction services can not be supplied without the movement of service providers). Countries which have these relatively liberal commitments in their schedules include Canada, the US, most of the European countries, Australia, New Zealand, South Africa, and Japan. In other words, the majority of the developed countries with whom Canada trades have accepted relatively liberal schedules. Some African, Latin American and Asian countries also have schedules that are fairly liberal, but the majority of developing countries retain more restricted trade in services since they did not submit a schedule for the construction industry.

Limitations in General...

Although 72 countries provided schedules for the construction industry, there were limitations to the commitments. Annex B contains a map identifying the limitations to GATS commitments by region. Common limitations to market access include restrictions on the type of legal entity allowed for commercial presence, foreign capital limits or ceilings, and constraints on the value of transactions or assets allowed when foreign countries establish a commercial presence. Requirements to hire local employees are another market access limitation identified some schedules.

With regard to national treatment, the most prevalent limitations relate to licensing, standards and qualifications of workers. Nationality and residency requirements were also maintained in a few countries.

Government procurement continues to play an important role in the international demand for construction services. The GATS currently imposes only minimal disciplines on the government procurement of services. Nevertheless, a GATS working group is presently considering the possibility of developing new GATS disciplines dealing with government procurement.

And Canada Specifically...

Canada, like most developed countries, scheduled relatively few restrictions on the supply of construction services except that the movement of natural persons is qualified by the rules established in

the horizontal section of the GATS schedules. Canada's GATS commitments related to construction services result in a relatively open domestic market.

The Canadian schedule identifies the existing barriers to construction but does not place any restraints on domestic regulatory authority. The only limitations on cross-border trade are related to construction undertaken from barges (which are protected by cabotage restrictions) or particular provincial rules and regulations. For example, Ontario and Newfoundland are the only provinces with specific limitations to commercial presence in construction services. Ontario also restricts the applicant or holder of a water power site development permit to be incorporate in Ontario.

VII. CANADA'S OTHER INTERNATIONAL COMMITMENTS

The WTO is not the only international agreement which affects trade in Canadian construction services. Canada is a member of other international trade organizations and agreements including the North American Free Trade Agreement (NAFTA). These agreements tend not to deal specifically with the construction industry but do occasionally mention services such as engineering and architecture which are ancillary to construction.

For example, Annex I of NAFTA contains reservations concerning existing non-conforming measures of their sub-national units related to services. Existing non-conforming measures were originally "grandfathered" but there have since been discussions which resulted in mutual recognition agreements in areas such as engineering.

VIII. PROPOSED CANADIAN OBJECTIVES FOR GATS 2000 NEGOTIATIONS

Based on this initial analysis, the following have been identified as proposed objectives for the construction sector negotiations (this list is only partial list and is open to review):

- Securing better market access for the *commercial presence* mode of delivery by negotiating less restrictive investment measures, nationality requests, liberalized access to local utilities and institutions and fewer stipulations regarding the type of corporate entities Canadian firms can establish abroad;

- Advocating improved disciplines in the WTO regarding the government procurement of services;

- Achieving higher levels of liberalisation in a variety of professional service sectors given that successful construction firms will require mastery in organisation skills as well as advanced

technology and computer aided design. Countries that are strong in consultancy, design services, technology and organisational know-how will have a comparative advantage in the construction service sector; and

- Increasing the number of countries making full commitments in each sub-sector of the construction industry.

IX. LET US KNOW WHAT YOU THINK

Those involved, or interested, in the exportation of Canadian construction services can assist the government in refining these general objectives by providing information on their particular international activities and experiences. The following questions are offered as guidelines for formulating input.

- For your firm, how important are international exports and activities currently and in the future? (very important, moderately important, not very important, not important at all)
- In order, what are the most important methods in which you reach your foreign clients - cross-border supply, commercial presence, or temporary presence of natural persons (clients or suppliers)?
- In the future, which countries do you anticipate will be important export destinations for your firm's services?
- What type of services do you anticipate your firm will export in the future?
- Do barriers to foreign market access, lack of government procurement opportunities, lack of commercial competitiveness, or something else cause your company to limit its international activities?
- In each of your foreign markets (current or future), how much does the local government affect your firm's ability to provide services? A lot, moderately, a little, or not at all?
- What specific measures have impeded your firm's business, or have affected your customers' ability to do business with your firm? (If possible, please cite the law or policy that impedes business.)

- For each impediment to doing business, how important is it for your firm that the measure be removed?

- What would you consider the priority concerns with respect to the liberalization of trade in construction services? (Rank the following from most to least important.)
  - investment measures
  - international market transparency
  - establishment of legal entities in foreign countries
  - government procurement
  - subsidies and tax incentives
  - restrictions on the mobility of skilled labour
  - mobility of specialized equipment and related services
  - nationality restrictions
  - land acquisition
  - residency requirements
  - others _____

- Negotiation of a multilateral agreement on services trade may well involve an exchange of concessions in which each country would agree to liberalizations of its own market. Are there any Canadian measures which you feel are essential to the Canadian market?

- Should Canada be concerned about seeking further market access in the construction sector? Why?

If you wish to provide views to the government on the construction service industry and the GATS 2000 negotiation, please forward your input to the following address:

GATS 2000
International Investment and Services Directorate
Industry Canada
235 Queen Street
Ottawa, Ontario
K1A 0H5

Attention: Carla VanBeselaere
Telephone: (613) 957-8108
Fax: (613) 952-0540
E-mail: vanbeselaere.carla@ic.gc.ca

X. ACKNOWLEDGEMENTS AND REFERENCES

Much of the information in this document was sourced from the following three documents:

Construction - Overview and Prospects: A Sector Competitiveness Framework prepared by the Service Industries and Capital Projects Branch of Industry Canada.

Canada in the Global Context: A statistical overview of the Canadian services economy prepared by the Service Industries and Capital Projects Branch of Industry Canada.

Construction and Related Engineering Services: A background note prepared by the World Trade Organization Secretariat.

XI. ADDITIONAL INFORMATION SOURCES

About the Construction Industry or Service Industries in General

Additional information on the construction sector or service industries in general can be found on the Strategis Website under Business Information by Sector, Service Industries and Capital Projects:

http://strategis.ic.gc.ca

or please contact:

Brian Wallace
Service Industries and Capital Projects Branch
Industry Canada
235 Queen Street
Ottawa, Ontario
K1A 0H5
Telephone: (613) 954-2947
Fax: (613) 952-9054
e-mail: wallace.brian@ic.gc.ca

About GATS

The legal text of the GATS is part of the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, and can be purchased through any government bookstore. It is publicly available through the WTO web site at:

http://www.wto.org/wto/legal/finalact.htm

The WTO website also provides additional background material on the structure of the GATS and on recent sectoral negotiations at:

http://www.wto.org/wto/services/services.htm.

The EC also provides a practical examination of the WTO GATS commitments on their website at:

http://gats-info.eu.int/gats-info/swtosvc.pl?&SECCODE=03

You can also contact:

The Services Trade Policy Division
Department of Foreign Affairs and International Trade
Telephone: (613) 944-0487
Fax: (613) 944-0058

More information on the GATS 2000 Agenda

Visit Industry Canada's Service Industry Website on Trade in Services at:

http://services2000.ic.gc.ca

Other Useful Information Link on the Internet

The United States International Trade Commission (USITC) is an independent, quasi-judicial federal agency that provides objective trade expertise to both the legislative and executive branches of

government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement. USITC analysts and economists investigate and publish reports on U.S. industries and the global trends that affect them.

Their web site is http://www.usitc.gov/

ANNEX A:

DEFINITIONS AND GLOSSARY OF GATS TERMINOLOGY

Agreement on Government Procurement (AGP) - One of two WTO plurilateral agreements to which not all Members are signatories. Its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

Balance of Payments - The difference between the income and expenditure of a country on its external account, resulting from exports and imports of goods, services, and governmental transactions.

Bound commitment - Commitment that cannot be made more restrictive in the future; only further liberalization is permitted (unless agreed penalty is paid).

Commitment - A measure, usually regarding market access and national treatment, that affects international trade in services. Commitments are listed in national schedules and identify service sectors and modes of supply that are affected.

Construction Services Definition - Most countries use the World Trade Organization's Services Sectoral Classification list to define what is meant by Construction and Related Engineering Services when making commitments in this Sector. This definition includes:

- *General construction work for buildings*: includes construction work (including new work, additions, alterations and renovation work) for all types of buildings, residential or non-residential, whether privately or publicly owned.
- *General construction work for civil engineering*: covers construction work for structures other than buildings such as highways and streets, railways an airfield runways, bridges and tunnels, waterways and harbours, dams, pipelines, communication and power lines, mining and manufacturing plants and stadia and sports grounds.
- *Installation and assembly work*: includes such activities as the assembly and erection of prefabricated constructions, installation work for hating and air conditioning, water plumbing, gas fitting, electrical wiring, fire alarm construction, insulation, fencing and lift construction.

- *Building completion and finishing work*: this item covers special trade construction work for the completion and finishing of buildings such as glazing, painting, floor and wall tiling, carpeting, carpentry, interior fitting and decoration, ornamentation fitting.
- *Other*: includes pre-erection work at construction sites, as well as special trade construction work such as foundation work, water well drilling, roofing, concrete work, steel bending and erection, and masonry work. It also covers renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.

Emergency Safeguards - Measures suspending commitments under certain emergency situations. Disciplines for these situations have to be developed by June 1999.

Exclusive Rights - The authority to exclude foreigners from certain types of contract work.

Grandfathered - exempt previously existing maters from general agreement.

Horizontal Commitment - Commitment that applies to international trade in multiple service sectors. Typically, horizontal commitments constitute limitations on market access or national treatment.

Juridical person - Any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise and whether privately- or governmetally-owned; includes corporations, trusts, partnerships, joint ventures, sole proprietorship, or associations (branches and representative offices are not included).

Measure - A law, regulation, rule, procedure, decision, or administrative action that affects trade in services. Measures may pertain to: (1) the purchase, payment, or use of a service; (2) a service suppliers's access to, and use of, services which are required to be available to the general public; and (3) a service supplier's ability to establish a presence, including a commercial presence, in a host country.

Member Countries - Those countries who are signatories to the World Trade Organization and thus, the GATS.

Modes of Service Delivery:

- *Cross-border trade in services (Mode 1)* - Trade takes place from the territory of one member into that of another without the movement of the service provider, e.g. engineering plans sent by wire or satellite.
- *Consumption Abroad (Mode 2)* - Services consumed or purchased by nationals of a member in the territory of another member where the service is supplied, e.g. tourism, where the consumer travels to another country to consume a service.
- *Commercial presence (Mode 3)* - Any type of business or professional establishment, including branches and representative offices, e.g. direct investment in the host country.
- *Temporary movement of a natural person (Mode 4)* - Temporary presence of natural persons in a market for the purposes of supplying services, e.g. professionals, employees of service providers.

Most-favoured Nation Treatment - A service or service supplier from a WTO Member country must be treated as favourably as a service or service supplier from any other country.

National Treatment - Foreign services and service providers must be treated no less favourably than their domestic counterparts.

Natural Person - An individual who is a national of a country under the law of that country, or in the case of a country which does not have nationals (e.g. territories), an individual who has the right of permanent residence under the law of that country.

Non-Residential Construction - Construction that does not relate to personal dwellings or accommodation.

Organizational Form - The structure of a company i.e., incorporated, partnership, etc.

Technically Infeasible - Not possible because technology does not permit it.

Unbound - Describes a situation where a WTO Member wishes to remain able to introduce or maintain measures inconsistent with market access and national treatment obligations.

ANNEX B:

SUMMARY OF GATS COMMITMENTS RELATED TO CONSTRUCTION

This annex summarizes the commitments and restrictions (related to the construction industry) made by WTO Members. The first section examines the horizontal restrictions that apply all to sectors (including construction) while the second section includes the details of the construction sector-specific commitments. Taken together these commitments represent the starting point for GATS 2000 negotiations. For reasons of presentation, the examination of sector-specific commitments is grouped by regions and limited to Canada's major trading partners. Complete information on all WTO Members commitments is available by request or from our website at http://services2000.ic.gc.ca. A glossary of the terminology used in this section can be found in Annex A.

HORIZONTAL RESTRICTIONS

These restrictions generally summarize broad measures affecting commercial presence and investment, restrictions on real estate transactions, government subsidies or taxation, and temporary movement of natural persons. In addition to these restrictions, developing countries have five years to phase in the agreement and several have also established preferences for companies which offer the best terms for transfer of technology. These horizontal commitments have to be examined in conjunction with the sector-specific commitments to assess the full extent of trade liberalization.

1. Commercial Presence and Investment Restrictions

The acquisition and control of a domestic business by a foreigner may be subject to investment ceilings, restrictions as to the type of assets that may be held, local incorporation and presence requirements, and government approval. For example, Canada requires approval for all direct acquisitions of Canadian businesses with assets not less than a monetary amount established and published in January of each year in the Canada Gazette. Currently the threshold is $172 million. In addition, several countries require that the majority of staff be locally acquired.

2. Real Estate Transactions Restrictions

Many countries restrict the purchases of real estate and the acquisition of land. Nationality restrictions and deposit requirements are relatively common. Often these regulations are established by sub-federal levels of government and, as a result, tend to be extremely complicated. Rather than impose restrictions on domestic real estate regulations, the GATS rules require transparency and access to information about these rules.

3. Government Subsidies or Taxation

To ensure sovereignty over domestic issues of taxation and subsidization, Members provided specific schedules on this issue. Foreigners may not be eligible for certain subsidies or may, under special circumstances, have to pay a different tax rate. For example, the US reserves the right to impose higher taxes on a national, resident or corporation of a foreign country where a national, resident or corporation of the US is being subject to discriminatory or extraterritorial taxes.

4. Movement of Natural Persons

Generally, GATS does not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory. The movement of natural persons is unbound under the GATS schedules. However, most Members generally committed to allowing temporary entry for measures concerning intra-corporate transferees (managers, executives and specialists), personnel engaged in the establishment of a business, and service salespersons.

CONSTRUCTION SECTOR-SPECIFIC COMMITMENTS

The following section outlines the commitments and restrictions for the construction sector established in the individual country schedules. In total 69 WTO Members made commitments in this sector but the level of commitments varies significantly by region and country.

North America

Mexico

- Services relating to visual and electronic aids for runways are subject to approval and authorization by the Ministry of Communication and Transport.
- Mexico remains unbound with respect to cross-border supply, consumption abroad and the movement of natural persons in all the sub-sectors except *General Construction Work for Civil Engineering*.

United States

- Cross-border supply of construction services remains unbound on the premise of technical infeasibility (i.e., construction services cannot be supplied without the movement of service providers).

South America

- Countries with GATS commitments in construction: *Argentina, Columbia, Venezuela, Brazil, Equador*. Bolivia, Chile, Paraguay, Peru, and Uruguay made no offers on construction and a result they may maintain or impose new restrictions.
- The regimes in place in this region are generally restrictive especially since only have of the area made commitments in the construction sector.
- The cross-border supply of construction services remains unbound in Columbia, Brazil and Venezuela.
- The regimes in place in this region are generally restrictive especially since only a few countries have of the area made commitments in the construction sector.

The Caribbean

- Countries with GATS commitments in construction: *Antilles (Netherlands), Dominican Republic, Panama, Aruba, Haiti, Trinidad & Tobago, Jamaica.*
- The cross-border supply of construction services is unbound, often on the premise of technical infeasibility.
- In Aruba, an economic needs test will be administered and there is at present a moratorium in force on the construction of new hotels.

Europe

- Countries with GATS Commitments in construction: *Austria*, Belgium*, Bulgaria, Czech Republic, Denmark*, Finland*, France*, Germany*, Greece*, Netherlands*, Iceland, Ireland*, Italy*, Luxembourg*, Norway, Poland, Portugal*, Romania, Slovak Republic, Slovenia, Spain*, Sweden*, Switzerland, United Kingdom*.*
- In most European nations, including those belonging to the European Union, the cross-border supply of construction services remains unbound because this mode of supply is not technically feasible.
- In Italy and Portugal, exclusive rights are granted for construction, maintenance and management of highways. (Exclusive rights are also granted for the Rome airport.)
- The European Union lists one MFN exemption specific to the sector. It allows construction companies from Central, Eastern and Southeastern Europe and from the Mediterranean Basin to obtain work permits for workers from these countries when performing temporary contract work for firms in EU member states.
- Greece has a nationality requirement for managers of the board of directors supplying construction services in the public sector.

- Norway requires that a building contractor and the supervisor of the work have lived in Norway for at least one year and continues to be resident (exceptions are granted under special circumstances). For electrical work, plumbing and water sanitation, Norway may recognise foreign exams as giving equivalent competence on a case by case basis.
- In Switzerland, commercial presence is unbound for installations in the area of energy, heating, water, communications and elevators.
- In Bulgaria, foreign persons are to provide construction services of national or regional significance only in partnership with local service suppliers with the exception of projects won by foreign suppliers through international auctions. Access is limited to natural persons upon recognition of their technical qualifications and subject to accreditation by a professional chamber in the Republic of Bulgaria. Bulgarian accreditation requirement: the main scope of the foreign person's activity to be the relevant services; experience in the field of construction; projects performed during the last two years; staff and technical capacity; bank references from a first rank foreign bank.

** denotes a member of the European Union.*

Middle East

- Countries with GATS commitments in construction: *Israel, Kuwait, Qatar, Turkey, United Arab Emirates*.
- Kuwait remains unbound with respect to cross-border supply and consumption abroad.
- Qatar allows access only for projects of over $100 M.
- Turkey gives priority to domestic firms except in projects financed by international institutions. For government tenders, the ratio of discrimination in favour of national companies is determined by the Ministry. For construction services, partnership establishments are subject to permission of the Ministry. Engineers and architects must apply to the Union of Chambers to become temporary members.
- The regimes in place in this region are generally restrictive.

Asia-Pacific

- Countries with GATS commitments in construction: *Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mongolia, Pakistan, Thailand, Singapore*.
- The cross-border supply of construction services is largely unbound, with the majority of nations stipulating the technical infeasibility of this mode of supply (i.e., construction services cannot be supplied without the movement of service providers).
- Consumption abroad is also largely unbound throughout the Asia-Pacific region.

- Korea requires joint ventures with licensed local companies for projects in the following construction sub-sectors: General Construction Work for Civil Engineering, Installation and Assembly Work, Building Completion and Finishing Work, and Other Construction Services.

China (An observer government that has applied to join the WTO, but has not yet become a Member)

- China remains unbound with respect to cross-border supply, commercial presence and the movement of natural persons (as specified in horizontal commitments).

Africa

- Countries with GATS commitments in construction: *Burundi, Democratic Republic of Congo, Egypt, Gabon, Gambia, Ghana, Ivory Coast, Malawi, Morocco, Sierra Leone, South Arica, Togo, Zambia*.
- The cross-border supply, consumption abroad of construction services, and the movement of natural persons (as defined in the horizontal commitments) remain unbound in many African countries.

Australasia

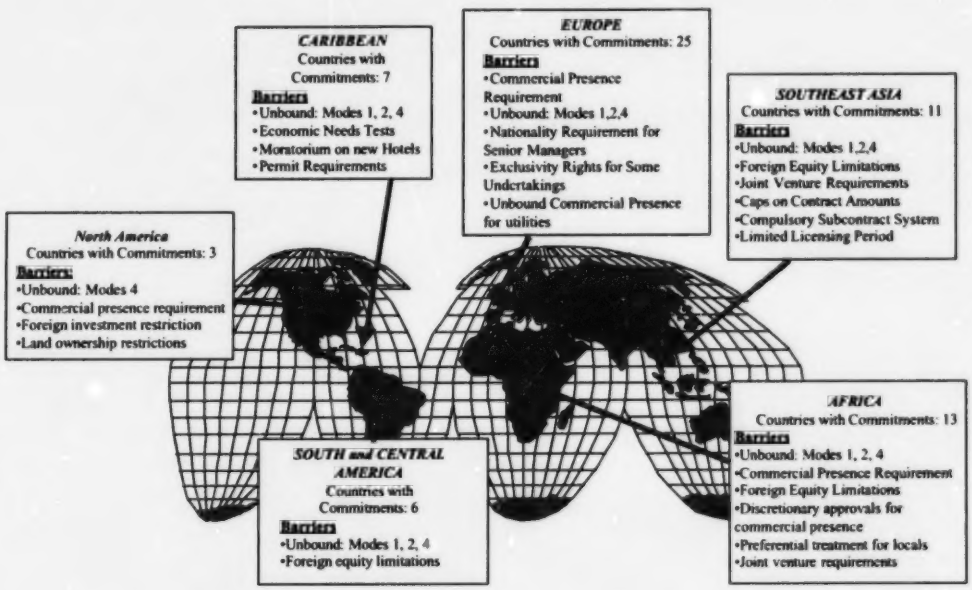
- Countries with GATS commitments in construction: *Australia, New Zealand, Papua New Guinea, Solomon Islands*.
- The cross-border supply of construction services remains unbound because this mode of service delivery was deemed to be technically infeasible (i.e., construction services cannot be supplied without the movement of service providers).

Table 3: Countries with GATS Commitments in the Construction Sub-Sectors

Country	General Construction Work for Building	General Construction Work for Civil Engineering	Installation and Assembly Work	Building Completion and Finishing Work	Other Services
Argentina	x		x	x	x
Aruba	x				
Australia	x	x	x	x	
Brazil	x	x	x		x
Bulgaria	x	x	x	x	
Burundi	x	x	x	x	x
Canada	x	x	x	x	x
China	x	x	x	x	x
Colombia	x	x	x		x
Congo RP	x	x			
Cuba	x	x			
Czech Republic	x	x	x	x	x
Dominican Republic	x	x	x	x	x
Ecuador					x
Egypt		x	x		x
European Community	x	x	x	x	x
Gabon			x		
Gambia					x
Ghana	x	x	x		
Haiti	x	x	x	x	
Hong Kong				x	x
Iceland	x	x	x	x	
India		x			
Indonesia	x	x	x		x
Ivory Coast			x		
Japan	x	x	x	x	x
Korea RP	x	x	x	x	x
Kuwait	x	x	x	x	
Lesotho	x	x	x	x	
Malawi	x	x	x	x	x
Malaysia	x	x	x	x	x
Mexico	x	x		x	x

Mongolia			x	x	
Morocco	x	x	x	x	x
Netherlands Antilles	x				
New Zealand	x	x	x	x	x
Norway	x	x	x	x	x
Pakistan		x			
Panama	x	x	x	x	
Papua New Guinea	x	x			
Poland	x	x	x	x	x
Qatar	x	x	x	x	
Romania	x	x	x	x	
Sierra Leone	x	x	x	x	x
Singapore	x	x	x	x	x
Slovak Republic	x	x	x	x	x
Slovenia	x	x	x	x	x
Solomon Islands	x	x			
South Africa	x	x	x	x	
Switzerland	x	x	x	x	x
Thailand	x	x	x		
Togo			x		
Trinidad and Tobago	x				
Turkey	x	x	x	x	
United Arab Emirates	x	x	x	x	x
U.S.A.	x	x	x	x	x
Venezuela	x	x	x	x	x
Zambia	x	x	x	x	x

Figure 6:
THE CONSTRUCTION SECTOR:
Limitations to GATS Commitments



Modes: (1) Cross-border, (2) Consumption abroad, (3) Commercial presence, (4) Presence of natural persons.